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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT SEATTLE

8                   NORMAN GOTCHER, JR.,

9                   Plaintiff,

10                  CASE NO. C18-1267-RAJ-JPD

11                  v.

12                  KING COUNTY, *et al.*,

13                  Defendants.

14                  REPORT AND RECOMMENDATION

15                  INTRODUCTION AND SUMMARY CONCLUSION

16                  This is a civil rights action filed under 42 U.S.C. § 1983. Plaintiff Norman Gotcher is a  
17 state prisoner who is currently confined at the Coyote Ridge Corrections Center in Connell,  
18 Washington. This matter comes before the Court at the present time for a determination of  
19 whether plaintiff's previously granted *in forma pauperis* (IFP) status should be revoked. This  
20 Court, having reviewed the pleadings filed in this action, plaintiff's history of litigation in the  
21 Western District of Washington, and plaintiff's response to this Court's Order directing him to  
22 show cause why his IFP status should not be revoked, concludes that IFP should be revoked and  
23 that plaintiff should be required to pay the filing fee if he wishes to proceed with this civil rights  
action.

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## DISCUSSION

2 On August 27, 2018, plaintiff submitted to the Court for filing a pleading which he  
3 identified as a complaint for medical malpractice and deliberate indifference. (*See* Dkt. 1-1.)  
4 Plaintiff submitted with his complaint an application to proceed with this action IFP. (*See* Dkt.  
5 1.) Though plaintiff is currently in the custody of the Washington Department of Corrections  
6 (“DOC”), and was in DOC custody at the time he filed this action, his complaint alleged claims  
7 pertaining to time he spent in King County custody in 2016 and 2017. Specifically, plaintiff  
8 alleged that he was denied timely follow-up care for injuries suffered prior to being booked into  
9 the King County Jail in July 2016, and that the failure of defendants to provide proper care  
10 violated his rights under the First and Eighth Amendments. (*See* Dkt. 1-1.)

11 After reviewing plaintiff's submissions, this Court issued an Order granting plaintiff  
12 leave to proceed IFP, and an Order declining to serve plaintiff's original complaint and granting  
13 him leave to amend. (*See* Dkt. 6, 7.) On December 3, 2018, plaintiff submitted an amended  
14 complaint to the Court for filing. (*See* Dkt. 13.) In conjunction with its review of plaintiff's  
15 amended pleading, the Court also conducted a review of plaintiff's extensive history of litigation  
16 in the Western District of Washington. The review of plaintiff's prior litigation activities  
17 suggested that plaintiff's application to proceed with this action IFP should not have been  
18 granted because he had, on at least three prior occasions, brought civil actions which were  
19 dismissed on the grounds that they were frivolous or failed to state a claim upon which relief  
20 could be granted.

21 Thus, on January 4, 2019, this Court issued an Order directing plaintiff to show cause  
22 why his IFP status should not be revoked. (Dkt. 14.) The Court explained therein that, pursuant  
23 to 28 U.S.C. § 1915(g), a prisoner may not proceed IFP in a civil action if he or she has, on three

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1 or more prior occasions, brought civil actions that were dismissed on the grounds that they were  
2 frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the  
3 prisoner is under imminent danger of serious physical injury. (*See* Dkt. 14 at 2.) The Court went  
4 on to note that plaintiff had accumulated at least three “strikes” under § 1915(g), and cited the  
5 following cases: *Gotcher v. United Way Corp., et al.*, Case No. 3:01-cv-05022-FDB; *Gotcher v.*  
6 *Bolton, et al.*, Case No. 3:01-cv-05024-FDB; and, *Gotcher v. Dauth, et al.*, Case No. 3:01-cv-  
7 05025-RJB. (*See id.*) The Court further noted that nothing in plaintiff’s original or amended  
8 pleadings in this case suggested he was under imminent danger of serious physical injury at the  
9 time he filed this action. (*Id.*)

10 Plaintiff filed a timely response to the Order to Show Cause on January 28, 2019. (Dkt.  
11 15.) Though not entirely clear, plaintiff appears to assert in his response that his IFP status  
12 should not be revoked because the three cases cited in the Court’s Order to Show Cause  
13 constituted plaintiff’s first attempts at civil litigation, and the court in those cases failed to  
14 provide plaintiff with information which would have permitted him to amend his complaints or  
15 to appeal the dismissals, as it was required to do. (*See id.* at 2.) Plaintiff also asserts that he is  
16 “currently experiencing imminent danger of serious physical injuries” as a result of slow eating  
17 habits and a continuing limp, both of which he alleges are attributable to defendants’ failure to  
18 treat his injuries while he was in custody in King County. (*Id.* at 3.)

19 To the extent plaintiff argues he should be granted an exception to the § 1915(g) three-  
20 strikes bar because the court, in his 2001 cases, did not provide him information necessary to  
21 amend his pleadings or to appeal his dismissals, his argument is frivolous. The records of those  
22 proceedings reveal that in each case, plaintiff was advised of the deficiencies in his complaint  
23 and was granted an opportunity to file an amended pleading. Plaintiff’s claim to the contrary is

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1 clearly false. And, even if plaintiff's claim were accurate, § 1915(g) provides an exception *only*  
2 for imminent danger, not for any other reason.

3 With respect to plaintiff's assertion that he is in imminent danger of serious physical  
4 injury, he cites only to the fact that he continues to suffer physical impairments as a result of  
5 defendants' alleged failure to provide proper care for his injuries while he was confined at the  
6 King County Jail in 2016-17. However, plaintiff indicates in his response to the Order to Show  
7 Cause that DOC medical staff have provided accommodations and treatment for the injuries he  
8 claims the defendants named in this action failed to treat. (*See* Dkt. 15 at 3.) This  
9 acknowledgement undermines plaintiff's claim that he is in imminent danger of serious physical  
10 injury. Moreover, because the claims asserted in the instant action arose at the King County Jail,  
11 and because plaintiff has been in DOC custody since he filed this action, any claim of imminent  
12 danger is necessarily unrelated to the claims raised herein.

13 As plaintiff has not made any credible showing that he satisfies the imminent danger  
14 exception to the § 1915(g) bar, this Court concludes that plaintiff is ineligible to file this lawsuit  
15 in federal court without paying the \$350.00 filing fee plus a \$50.00 administrative fee (for a total  
16 of \$400.00).

17 CONCLUSION

18 Based on the foregoing, this Court recommends that plaintiff's IFP status be revoked.  
19 This Court further recommends that plaintiff be directed to pay the filing fee within thirty (30)  
20 days of the date on which this Report and Recommendation is adopted, and that this action be  
21 terminated if plaintiff fails to do so. A proposed order accompanies this Report and  
22 Recommendation.

1 Objections to this Report and Recommendation, if any, should be filed with the Clerk and  
2 served upon all parties to this suit by no later than March 7, 2019. Failure to file objections  
3 within the specified time may affect your right to appeal. Objections should be noted for  
4 consideration on the District Judge's motion calendar for the third Friday after they are filed.  
5 Responses to objections may be filed within **fourteen (14)** days after service of objections. If no  
6 timely objections are filed, the matter will be ready for consideration by the District Judge on  
7 **March 8, 2019.**

8 This Report and Recommendation is not an appealable order. Thus, a notice of appeal  
9 seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the  
10 assigned District Judge acts on this Report and Recommendation.

11 DATED this 14<sup>th</sup> day of February, 2019.

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14 JAMES P. DONOHUE  
15 United States Magistrate Judge  
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